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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 74-1623

CHESTER SLONE,
ET AL ..... APPELLANTS

VS:

DESKINS BRANCH COAL COMPANY,
ET AL ..... APPELLEES

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF KENTUCKY

MOTION TO AFFIRM

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The appellees, Deskins Branch Coal Company, Kentucky Elkhorn Coals, Inc. and Kentucky Carbon Corporation, pursuant to Rule 16 (1) (C) of this Court, respectfully move that the judgment of the specially constituted Three Judge District Court be affirmed on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantiated as not to need further argument.

QUESTION PRESENTED

The statement of appellants (pp. 5-7) lists ten questions as presented on this appeal. As these appellees view the case, the question presented (which in fact incorporates the substance of the questions raised by appellants) is as follows:

I. **WHETHER THE DEFERRAL OF PAYMENT OF INCREASED STATE WORKMEN'S COMPENSATION BENEFITS TO COAL MINERS DISABLED BY PNEUMOCONIOSIS, WHO, AS A CLASS, ARE THE ONLY PERSONS ENTITLED TO FILE CLAIMS FOR ADDITIONAL OCCUPATIONAL DISEASE DISABILITY BENEFITS PROVIDED BY THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, AS AMENDED, IS A VIOLATION OF RIGHTS GUARANTEED BY THE EQUAL PROTECTION PROVISIONS OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.**

STATEMENT

Section 37, Chapter 78, Acts of 1972, Kentucky General Assembly, the statute involved on this appeal, is set out verbatim in Appellants' Jurisdictional Statement at pages 4 and 5.

The judgment and per curiam opinion of the lower Court, upholding the constitutionality of the Act, appears at pages 1a through 8a of Appellants' Appendix.

The Opinion of the Court of Appeals of Kentucky in the case of *Chapman* v. *Eastern Coal*

Corporation, Ky., 519 S.W. 2d 390 (1975), in which the Kentucky Court upheld the constitutionality of this statute (against an attack that it violated the equal protection clause of the Fourteenth Amendment to the United States Constitution —) appears on pages 40a through 53a of Appellants' Appendix. (Chapman did not prosecute an appeal to this Court.)

The 1972 Kentucky Legislature (Senate Bill 184) extensively amended the Workmen's Compensation Law of Kentucky and, inter alia, provided for increased benefits for occupational diseases. (KRS 342.316, Section 4). The effective date of the Act was declared to be January 1, 1973. However, Section 37 (the section being challenged here) provided, in effect, that as to those claims for occupational diseases which could also be filed with a Federal Agency (Federal Black Lung Act), the benefits under such claims should be based on the old law in existence prior to the amendment.

ARGUMENT

The opinion of Justice Palmore in *Chapman* v. *Eastern Coal Corporation*, Ky., 519 S.W. 2d 390 (1975) (all Justices concurring) records the reasons for the 1972 Amendment as to occupational diseases. The Court, at pages 391-392, said:

"The purpose and effect of the 1972 amendment were to bring our workmen's compensation law into substantial conformity with Subchapter IV of 1969, 30 U.S.C. §§801, 901 et seq., which subchapter is entitled, "Black Lung Benefits," and will be referred to here as the federal black lung law, or simply as the federal law. Most important among the changes in the state law was a very substantial increase in the amount and duration of benefits payable to successful claimants, effective January 1, 1973, except as to those covered by the federal law.

Essentially, the federal law enabled black lung claimants who did not have commensurate advantages under state compensation laws to claim benefits from the federal government and at federal expense until the end of 1972. During 1972 Congress extended this period until the end of 1973, except that as to claims filed during the last half of 1973 liability for benefits payable after December 31, 1973 was shifted to the employers. 30 U.S.C.A. §924, 925. *Maggard*, supra, construed Sec. 37 of the 1972 Amendment to mean that if a claimant was eligible under the federal law he could not recover the increase in monetary benefits effected by the 1972 amendment of the state law. In short, it was determined that the legislative intent was to exclude black lung claimants whose last exposure occurred in 1973 from the increase in *mani* mum payments available by virtue of the 1972 amendment to other workmen who became disabled in 1973. The ostensible reason for the exclusion was that

these particular claimants already were the beneficiaries of special dispensation by Congress and were, presumably, sufficiently provided for under the federal black lung law. An obvious effect was to leave any additional financial burden with respect to black lung claimants upon the taxpayers of the United States instead of shifting it to the coal mining industry so long as Congress saw fit to make the public money available."

Since the Workmen's Compensation Act is economic legislation, the General Assembly may provide different classifications for differing treatment under the Act without violation of the equal protection clause of the Fourteenth Amendment so long as there is some rational basis for the different classifications *Dandridge* v. *Williams*, 397 U.S. 471, 485; 90 S.Ct. 1153; 25 L.Ed. 2d 491, 501 (1970). A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. *McGowan* v. *Maryland*, 366 U.S. 420, 426, 6 L.Ed. 2d 393, 81 S.Ct. 1101 (1961). Those attacking must negate every conceivable basis which might support it. *Madden* v. *Kentucky*, 309 U.S. 83, 84 L.Ed. 590, 60 S.Ct. 406.

Mere classification does not of itself deprive a group of equal protection. *Carrington* v. *Rash*, 380 U.S. 89, 13 L.Ed. 2d 675, 85 S.Ct. 775. A state may classify persons for the purpose of legislation,

and, as here, the Kentucky Legislature has a wide range of discretion in exercising its power to make classifications for the purpose of enacting laws over matters within its jurisdiction. *Morey* v. *Doud*, 354 U.S. 457, 1 L.Ed. 2d 1485, 77 S.Ct. 1344; *Reed* v. *Reed*, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed. 225; *Robinson* v. *Board of Regents of Eastern Kentucky University*, 6th Circuit Ky., 475 F. 2d 707 (1973).

When Section 37 is viewed and examined in relation to the above basic rules of construction, it would seem clear that it is not violative of the rights secured appellants under the Fourteenth Amendment. Appellants were members of a class of coal miners who were entitled to file for and receive Federal benefits, in addition to State benefits. All members of their class were treated equally. The Federal benefits were peculiar to their class, and not available to employees entitled to State benefits by reason of injuries or occupational diseases not related to coal mining. The Legislature obviously made the distinction because of the Federal benefits available to appellants and members of their class. This classification has a reasonable basis and is therefore not purely arbitrary. The wording of Section 37, being of an unusual character, strongly suggests that the Legislature gave careful consideration to determine whether it was obnoxious to the Constitution. *Morey* v. *Doud*, *supra*. Appellants have not met the burden of proof to overcome the presumption of constitutionality.

CONCLUSION

For the foregoing reasons the Court is respectfully submitted that this Court should grant the Motion of these appellees to affirm the judgment of the District Court without further argument.

Respectfully submitted,

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